

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION

DIVISIONS II & III

CA05-246

March 22, 2006

JEFF NIX and
ANGELA NIX

APPELLANTS

APPEAL FROM THE LINCOLN
COUNTY CIRCUIT COURT
[LCIV2004-26-2]

V.

SIDNEY R. OWEN and
LELA ANN OWEN

APPELLEES

HON. JODI RAINES DENNIS,
CIRCUIT JUDGE

REVERSED and REMANDED

LARRY D. VAUGHT, Judge

Appellants Angela and Jeff Nix appeal an order of the Lincoln County Circuit Court filed on November 10, 2004, that quieted title to 3.24 acres of disputed property in appellees Lela and Sidney Owen. We reverse and remand because the trial court erred in granting the Owens's directed-verdict motion.

On November 10, 1950, Joe and Daphne McGregor deeded the disputed tract of land, along with some other property, to Joe's brother, Ross McGregor. Due to a clerical mistake in the tax assessor's office, Joe and Ross both continued to pay taxes on the 3.24 acres. On June 20, 1973, Ross conveyed the disputed tract of land, along with some other land, to the Owens, who then commenced to pay taxes on it. Joe and Daphne conveyed property near the disputed tract to their grand-daughter, Angela Nix, in February 1991. In 1993, the Owens surveyed their property, and evidence suggests that Joe McGregor was displeased with the

results. Joe died in 2002, and in 2003, the Nixes and the Owens disagreed as to the ownership of the disputed tract. On February 9, 2004, Daphne again conveyed the disputed 3.24-acre tract, this time to the Nixes.

The Owens filed suit to quiet title, and the Nixes countersued claiming adverse possession. The case was first tried on the Nixes' adverse possession claim. Angela and Jeff both testified that they had used the disputed tract of land since moving to their nearby property in 1990 but that they did so believing the land was owned by their grandparents and thus without any intent to adversely possess the land from them or the Owens. After the Nixes had presented their case, the Owens moved for a directed verdict. They argued that the Nixes failed to show that they intended to hold the land adversely to the true owner, and in fact, had both testified that they had not intended to hold adversely to anyone. The Nixes counter-argued that it was Joe McGregor who had adversely possessed the land as predecessor in title to the Nixes. The trial judge granted the directed-verdict motion finding that the Nixes had not intended to hold the land adversely for the statutorily required period of time. The following colloquy then occurred:

NIXES' ATTORNEY: So the Court is ruling that you can't hold adversely until you receive notice from someone else that they own it.

COURT: That is what is my understanding is of the reading of the law.

In determining whether a directed verdict should have been granted, we review the evidence in the light most favorable to the party against whom the verdict is sought and give it its highest probative value, taking into account all reasonable inferences deducible from it. *Woodall v. Chuck Dory Auto Sales, Inc.*, 347 Ark. 260, 61 S.W.3d 835 (2001). A motion for directed verdict should be granted only if there is no substantial evidence to support a jury verdict. *Id.* at 264, 61 S.W.3d at 838. Where the evidence is such that fair-minded persons might reach different conclusions, then a jury question is presented, and the directed verdict

should be reversed. *Id.*, 61 S.W.3d at 838. It is a trial court's duty to review a motion for directed verdict or dismissal at the conclusion of a plaintiff's case by deciding whether, if it were a jury trial, the evidence would be sufficient to present to the jury. *Id.*, 61 S.W.3d at 838.

We first note that the court misstated the law of adverse possession when it agreed with the summary tendered by counsel for the Nixes. Nonetheless, the conclusion that the court came to—that the Nixes failed to prove that they intended to hold the land adversely for the statutory required period of time—was correct. However, the trial court failed to analyze the Nixes's argument that Joe McGregor had adversely possessed the land and then deeded it to them. Some evidence was presented that Joe McGregor continued to use the 3.24-acre tract for many years after conveying it to Ross and was angered over the results of the 1993 survey. Therefore, it was error to grant a directed verdict without at least addressing this evidence. Because a directed-verdict motion was not proper, we reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.

PITTMAN, C.J., and GRIFFEN, GLOVER, BAKER, and ROAF, JJ., agree.